

1 PRUDENCE CHOU,

2 No. C-05-3203 MMC

3 Plaintiff,

4 **ORDER GRANTING DEFENDANT'S**
5 **MOTION TO DISMISS; VACATING**
6 **HEARING**

7 v.

8 JOAN CHOW et al.,

9 (Docket No. 31)

10 Defendants.

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Before the Court is the motion to dismiss filed January 20, 2006 by defendant Joan Chow ("Chow"), seeking dismissal of the instant action for lack of subject matter jurisdiction. Alternatively, Chow moves to sever the claims asserted against her, pursuant to Rule 21 of the Federal Rules of Civil Procedure. Plaintiff Prudence Chou ("Chou"), appearing pro se, has filed opposition to the motion; Chow has filed a reply. Having considered the papers filed in support of and in opposition to the motion, the Court finds the matter appropriate for decision without oral argument, see Civil L.R. 7-1(b), and hereby VACATES the February 24, 2006 hearing. For the reasons set forth below, Chow's motion to dismiss is GRANTED.

BACKGROUND¹

Chou and Chow are sisters. (See Compl. at 2.) Chou disputes Chow's ownership of

¹Facts contained in the background statement are summarized from the factual allegations of the Complaint and should not be understood as stating the Court's conclusions as to the truth of any such allegation.

1 real property located at 36,329 Lane, Xmhwa Road, Shanghai ("Shanghai property"), in the
2 People's Republic of China ("People's Republic"), which property previously was owned by
3 their late mother.

4 In 1981, eight years after her mother's death, the Shanghai Housing Bureau
5 transferred ownership of the Shanghai property to Chow. (See id. at 3.) Chou asserts that
6 Chow, through her Shanghai representative, "Mr. Chang," ("Chang") bribed the Shanghai
7 Housing Bureau "to unlawfully and secretly transfer" the Shanghai property to Chow. (See
8 id.) Other property in the People's Republic is still registered in their mother's name. (See
9 id. at 5.)

10 In November 1990, Chou filed two lawsuits with the "Shanghai med-level court," one
11 against Chow and Chang, and the other against Chang alone. (See id. at 4.) Additionally,
12 in December 1990, Chou filed an administrative complaint against the Shanghai Housing
13 Bureau. (See id.) In mid-1991, the Shanghai court dismissed Chou's lawsuit against
14 Chow and Chang, as well as her administrative complaint against the Shanghai Housing
15 Bureau. (See id.) The Court failed to address Chou's separate lawsuit against Chang.
16 (See id.) The Shanghai Superior Court has not acted on Chou's appeals of the dismissals.
17 (See id.)

18 Chou asserts that the current market value of the Shanghai property is more than
19 one million dollars. (See id. at 5.)

20 On August 8, 2005, Chou, along with her sister Betty Chiang ("Chiang"), filed the
21 instant action against Chow and the People's Republic. Thereafter, Chiang voluntarily
22 dismissed her claims. To date, Chou has not served the People's Republic.

23 Chou seeks an order directing the Shanghai Housing Bureau to restore ownership of
24 the Shanghai property to her deceased mother. (See id. at 5.) Chou further seeks an
25 order requiring Chow to pay Chou her "rightful share of income from the rent [Chow] has
26 collected from [their] deceased mother's house." (See id.) Chou additionally asks the
27 Court to order the Chinese Government to "designate a special official or a court to execute
28 [her] family inheritance according to the proclaimed Chinese Inheritance Law" and to

1 “[f]orfeit Joan Chow’s and John Chow’s share of inheritance pursuant to the Rule 7 of
 2 Inheritance Law of the People’s Republic of China.”² (See *id.* at 6)

3 **LEGAL STANDARD**

4 A motion to dismiss for lack of subject matter jurisdiction is brought pursuant to Rule
 5 12(b)(1) of the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 12(b)(1). The party
 6 asserting jurisdiction has the burden of establishing the existence of federal subject matter
 7 jurisdiction. See Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 377 (1994).

8 **DISCUSSION**

9 Chow moves to dismiss the instant action on the grounds that Chou’s complaint is
 10 deficient in that she has failed to allege any basis for federal jurisdiction over the instant
 11 action; that both diversity jurisdiction and federal question jurisdiction in fact are lacking;
 12 and that the People’s Republic is immune from suit under the Foreign Sovereign
 13 Immunities Act (“FSIA”). In the alternative, Chow argues that the Court should sever the
 14 claims asserted against her, pursuant to Rule 21 of the Federal Rules of Civil Procedure,
 15 and/or decline jurisdiction over the instant action pursuant to the Act of State doctrine.

16 **A. Failure to Allege Jurisdiction**

17 Chow first argues that the instant action is subject to dismissal because Chou has
 18 not included a jurisdictional allegation in her complaint. Rule 8(a) of the Federal Rules of
 19 Civil Procedure requires that a complaint include “a short and plain statement of the
 20 grounds upon which the court’s jurisdiction depends.” See Fed. R. Civ. P. 8(a). In addition,
 21 the Civil Local Rules of this District provide that “[e]ach complaint . . . must include a
 22 separate paragraph entitled ‘Jurisdiction,’” which must “identify the statutory or other basis
 23 for federal jurisdiction and the facts supporting such jurisdiction.” See Civil L.R. 3-5.

24 Even where a complaint does not contain adequate jurisdictional allegations,
 25 however, the Court should not dismiss if the factual allegations of the complaint
 26 demonstrate a basis for jurisdiction. See Cook v. Winfrey, 141 F.3d 322, 326 (7th Cir.

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 28 ² Although Chou alleges her brother John Chow misappropriated certain family
 possessions, (see *id.* at 2), she has not named John Chow as a defendant.

1 1998) (“Imperfections in pleading will not divest a federal court of jurisdiction where the
2 complaint as a whole reveals a proper basis for jurisdiction.”)

3 Accordingly, because Chou’s failure to allege a basis for jurisdiction does not require
4 dismissal of her complaint, the Court turns to the factual allegations of the complaint to
5 determine whether Chou has stated a basis for federal subject matter jurisdiction over the
6 instant action.

7 **B. Diversity Jurisdiction**

8 Federal courts have diversity jurisdiction, pursuant to 28 U.S.C. § 1332, over actions
9 between citizens of different states. See 28 U.S.C. § 1332(a). Diversity jurisdiction
10 requires that the citizenship of each plaintiff be diverse from that of each defendant. See
11 Caterpillar, Inc. v. Lewis, 519 U.S. 61, 68 (1996). Here, Chou alleges that she and Chow
12 both reside in California, (see Compl. at 1, 2), and does not contend that diversity of
13 citizenship exists among the parties.

14 Accordingly, the Court does not have diversity jurisdiction over the instant action.

15 **C. Federal Question Jurisdiction**

16 Pursuant to 28 U.S.C. § 1331, federal courts have “original jurisdiction of all civil
17 actions arising under the Constitution, laws, or treaties of the United States.” See 28
18 U.S.C. § 1331. Chou’s complaint contains no allegation that defendants violated any
19 federal law, and the Court is unaware of any federal law that may have been violated as a
20 result of the acts alleged in the complaint. Indeed, Chou alleges only violations of Chinese
21 inheritance law, (see Compl. at 6), and does not contend in her opposition that she is
22 asserting any federal claim.

23 Accordingly, the Court does not have federal question jurisdiction over the instant
24 action.

25 **D. Actions Against Foreign States**

26 The district courts have “original jurisdiction . . . of any nonjury civil action against a
27 foreign state . . . as to any claim for relief in personam with respect to which the foreign
28 state is not entitled to immunity” under the FSIA or any applicable international agreement.

1 See 28 U.S.C. § 1330. Chou's claims against the People's Republic and against Chow
 2 arise from the same case or controversy. Consequently, if the Court has jurisdiction over
 3 the People's Republic, it also has supplemental jurisdiction over Chou's claims against
 4 Chow. See 28 U.S.C. § 1367(a). As noted, Chow contends the People's Republic is
 5 immune from suit under the FSIA.

6 Under the FSIA, and, in particular, 28 U.S.C. § 1604, "a foreign state shall be
 7 immune from the jurisdiction of the courts of the United States and of the States" unless an
 8 exception specified in § 1605 is applicable. See 28 U.S.C. § 1604; see also 28 U.S.C.
 9 § 1605 (setting forth exceptions). Accordingly, absent an exception, as set forth in § 1605,
 10 federal and state courts are barred, by § 1604, from exercising jurisdiction when a foreign
 11 state is entitled to immunity. See Argentine Republic v. Amerada Hess Shipping Co., 488
 12 U.S. 428, 434 (1989) (emphasis omitted).

13 The defendant bears the ultimate burden of demonstrating that it is immune from
 14 suit under the FSIA. See Phaneuf v. Republic of Indonesia, 106 F.3d 302, 306 (9th Cir.
 15 1997). The defendant first establishes a *prima facie* case of sovereign immunity, and thus
 16 a presumption of immunity, by demonstrating that it is a foreign state within the meaning of
 17 the FSIA. See id. If the defendant establishes a *prima facie* case of immunity, "the burden
 18 of production then shifts to the plaintiff to offer evidence that an exception [to the FSIA]
 19 applies." See id. at 307. If the plaintiff meets its burden of production, the defendant then
 20 must prove by a preponderance of the evidence that an exception does not apply. See id.

21 It cannot be disputed that the People's Republic is a foreign state within the meaning
 22 of the FSIA. See, e.g., Richmark Corp. v. Timber Falling Consultants, Inc., 937 F.2d 1444,
 23 1446 n.1 (9th Cir. 1991) (noting corporation organized under laws of the People's Republic
 24 was foreign state within meaning of FSIA);³ see also BP Chemicals Ltd. v. Jiangsu Sopo
 25 Corp. (Group) Ltd., 420 F.3d 810, 812, 816 (8th Cir. 2005) (holding corporation wholly
 26 owned by People's Republic was foreign state under FSIA). Accordingly, Chow has

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 28 ³ The FSIA defines "foreign state" to include "a political subdivision of a foreign state
 or an agency or instrumentality of a foreign state[.]" See 28 U.S.C. § 1603(a).

1 established a prima facie case that the People's Republic is immune from suit under the
2 FSIA.

3 Chou makes no attempt to meet her burden of production of evidence that an
4 exception to the FSIA applies. Rather, Chou states that her "position is to leave the
5 jurisdiction matters for the Court to decide." (See Opp. at 1.) As Chou has not met her
6 burden of production, she has not rebutted the presumption that the People's Republic is
7 immune from suit under the FSIA. See Phaneuf v. Republic of Indonesia, 106 F.3d at
8 306-07. Moreover, having reviewed the relevant statutes, the Court has discerned no
9 exception even arguably applicable to Chou's claims. See 28 U.S.C. §§ 1604, 1605.

10 **CONCLUSION**

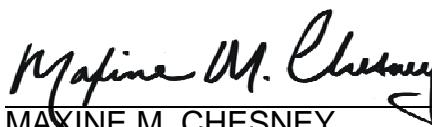
11 Because diversity jurisdiction and federal question jurisdiction do not exist over
12 Chou's claims against Chow, and because the People's Republic is immune from suit,
13 Chow's motion to dismiss the instant action for lack of subject matter jurisdiction is hereby
14 GRANTED as follows:

15 1. Chou's claims against the People's Republic are DISMISSED with prejudice.
16 2. Chou's claims against Chow are DISMISSED without prejudice to Chou's
17 reasserting said claims in state court.⁴

18 The Clerk shall close the file.

19 **IT IS SO ORDERED.**

20 Dated: February 24, 2006


MAXINE M. CHESNEY
United States District Judge

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27 ⁴In light of the above rulings, the Court does not reach Chow's additional argument
28 that the Court should sever the claims asserted against her, pursuant to Rule 21 of the
Federal Rules of Civil Procedure, or that the Court should decline to exercise jurisdiction
over the instant action under the Act of State doctrine.